

ANTHONY JUSKIEWICZ

IBLA 84-80

Decided March 7, 1984

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring the Half Shoe #10 through Half Shoe #12, Half Shoe #19, and Half Shoe #20 unpatented lode mining claims null and void ab initio. NMMC 112477, NMMC 112478, NMMC 112479, NMMC 112486, and NMMC 112487.

Affirmed in part; reversed in part.

1. Withdrawals and Reservations: Authority to Make

The Secretary of the Interior has the authority to withdraw mineralized lands from mineral entry.

2. Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A locator may not locate a claim with a discovery on patented or withdrawn lands because such lands are not open to the operation of the mining laws. In such cases the claim is void ab initio.

3. Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Lode Claims -- Mining Claims: Surface Uses -- Mining Claims: Withdrawn Land

A locator whose discovery is on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins apexing within that portion of the claim subject to location. This principle permits development of unappropriated mineral in irregular parcels of lands in compliance with the statutory requirements for parallel end lines.

4. Mining Claims: Extralateral Rights -- Withdrawals and Reservations: Effect of

A withdrawal from the operation of the general mining laws does not deprive a claimant of the right to exercise extralateral rights within the withdrawn lands if those extralateral rights are derived from ownership of valid lode mining claims located prior to the withdrawal. The ownership of ores and minerals by virtue

of extralateral rights stemming from valid lode mining claims located prior to withdrawal is not divested by the withdrawal.

APPEARANCES: Anthony Juskiewicz, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Anthony Juskiewicz has appealed from a September 16, 1983, decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring the Half Shoe #10, Half Shoe #11, Half Shoe #12, Half Shoe #19, and Half Shoe #20 unpatented lode mining claims null and void ab initio in their entirety.

The pertinent portion of the BLM decision states:

Location notices for the five unpatented mining claims * * * were filed for recordation with the Bureau of Land Management on November 12, 1981, by Mr. Anthony Juskiewicz. The filing was in compliance with Section 314 of the Federal Land Policy and Management Act of 1976 and the regulations in 43 CFR 3833. The claims were located on October 24 and 25, 1981 and are situated within Section 31, T. 22 S., R. 4 E., NMPM.

Official BLM records show that on March 27, 1969, the Bureau of Land Management segregated these lands from all forms of appropriation under the public land laws, including the general mining and mineral leasing laws. Notification of the segregation was published in the March 27, 1969 Federal Register.

Since the lands were segregated before you located the mining claims, the * * * mining claims are declared null and void, ab initio in their entirety[.]

As a basis for his appeal appellant states that the claims lie within a heavily mineralized zone, that the claims can be mined from adjacent patented claims owned by him and that it was not the intent of Congress and the Administration to remove areas of mineralization from the Nation's raw materials inventory. Appellant also claims that he has the right to remove the minerals from the withdrawn land by reason of his extralateral rights stemming from the patented claims.

[1] Appellant does not challenge the validity of the withdrawal but claims that it was not the intent of Congress or the Administration to remove areas of mineralization from the Nation's raw materials inventory. It is clear that appellant is incorrect in his belief that Congress never intended that mineralized lands were subject to withdrawal. See, e.g., Authority to Make a Permanent Withdrawal, M-36692 (July 21, 1966). An example of the congressional recognition of the fact that withdrawal of lands may contain areas of mineralization can be found in the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 through 1784 (1976). That Act contemplates the withdrawal of mineralized lands and recognizes, as valid, previous withdrawals of lands which contain areas of mineralization. See 43 U.S.C. § 1714 (1976). In addition, regulations have been promulgated by the Secretary of the Interior providing for withdrawal of lands without restriction with respect to

areas of mineralization. See 43 CFR Part 2300. The lands in the NW 1/4 sec. 31, T. 22 S., R. 4 E., New Mexico principal meridian, were withdrawn by a classification duly published at 43 FR 5748 on March 27, 1969. This classification order segregated the lands from mineral entry.

[2] A locator may not locate a mining claim with a discovery on patented or withdrawn land because such land is not open to the operation of the mining laws. In such cases, the claim is void ab initio. Swanson v. Sears, 224 U.S. 180 (1912). Appellant has filed a map of the claims pursuant to the requirements of 43 U.S.C. § 1744(b) (1976) that the owner of an unpatented mining claim file a description of the location of the mining claim sufficient to locate the claim on the ground. See 43 CFR 3833.1-2(c)(6). This map shows the Half Shoe #10 and Half Shoe #11 lode mining claims to be situated entirely within the withdrawn lands. As the claims are entirely within the withdrawn lands the determination of the New Mexico State Office, BLM, that these claims were null and void ab initio was correct, and the determination is affirmed.

[3] A locator whose discovery is located on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins within that portion of the claim subject to location. Marilyn Dutton Hansen, 79 IBLA 214 (1984); Santa Fe Mining, Inc., 79 IBLA 48 (1984); Zula M. Brinkerhoff, 75 IBLA 179 (1983). This principle permits development of unappropriated minerals in irregular parcels of land in compliance with the statutory requirement for parallel end lines. 30 U.S.C. § 23 (1976); Del Monte Mining Co. v. Last Chance Mining Co., 171 U.S. 55 (1898); The Hidee Gold Mining Co., 30 L.D. 420 (1901). The map submitted by appellant shows that portions of the Half Shoe #12, Half Shoe #19, and Half Shoe #20 lode mining claims are located outside the NW 1/4 sec. 31, and on lands which appear to be open to location. As a portion of these claims were located on ground apparently open to mineral entry, these claims cannot be considered to be void ab initio by reason of the fact that they were located on lands withdrawn from mineral entry. Appellant must recognize, however, that the withdrawal of the lands in sec. 31 from mineral entry prior to location of these claims precludes the exercise of rights to either the surface or the mineral within the withdrawn lands by reason of ownership of these claims. Santa Fe Mining, Inc., *supra* at 50-51. The only rights within the withdrawn lands conferred upon appellant by reason of the ownership of the Half Shoe #12, Half Shoe #19, or Half Shoe #20 mining claims is the right to use the exterior boundaries of the claims for the purpose of determining extralateral rights to ores and minerals outside the withdrawn lands.

[4] While it has nothing to do with the validity of the claims that are the subject of this appeal, appellant is correct regarding one of the contentions in his statement of reasons. The withdrawal does not deprive appellant of the right to exercise extralateral rights within the withdrawn lands if those extralateral rights are derived from ownership of valid lode mining claims which were located prior to the withdrawal. The ownership of the ores and minerals by virtue of extralateral rights stemming from valid lode mining claims located prior to withdrawal is not divested by the withdrawal.

Appellant must be cautioned that the doctrine of extralateral rights is contrary to common law. The exercise of these extralateral rights must be based on the ownership of an apex within lode mining claims validly located prior to withdrawal and is limited not only by the planes of the end lines but also to the confines of the vein. Prior to exercise of these rights a claimant must be prepared to come forward and prove that he has the right to exercise ownership of veins extralaterally within the property he proposes to mine. See generally 2 American Law of Mining, Title VI, Chapter II (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed with respect to the Half Shoe #10 and Half Shoe #11 unpatented lode mining claims (NMMC 112477 and NMMC 112478) and reversed with respect to the Half Shoe #12, Half Shoe #19, and Half Shoe #20 unpatented lode mining claims (NMMC 112479, NMMC 112486, and NMMC 112487).

R. W. Mullen
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

